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THIS IS NOT A DISCIPLINARY
ACTION OR FINAL DECISION
OF THE BOARD

8 BEFORE THE
9 CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
10 STATE OF CALIFORNIA

11 In the Matter of the Statement of Issues Against:

Case No. SI-2012-8

12 **CHARLES OSCAR DE SIMONI**
13 13790 Newcastle Ct.
Fontana, CA 92335

STATEMENT OF ISSUES

14 Certified Public Accountant License Application

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Patti Bowers (Complainant) brings this Statement of Issues solely in her official
20 capacity as the Executive Officer of the California Board of Accountancy, Department of
21 Consumer Affairs (CBA).

22 2. On or about May 13, 2011, the CBA received a Certified Public Accountant License
23 Application from Charles Oscar De Simoni (Respondent). On or about May 9, 2011, Charles
24 Oscar De Simoni certified under penalty of perjury to the truthfulness of all statements, answers,
25 and representations in the application. The CBA denied the application on July 29, 2011.

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1 with Section 5080), or may censure the holder of that permit or certificate for unprofessional
2 conduct that includes, but is not limited to, one or any combination of the following causes:

3 "(a) Conviction of any crime substantially related to the qualifications, functions and
4 duties of a certified public accountant or a public accountant. . . ."

5 7. Section 5106 states:

6 "A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to
7 be a conviction within the meaning of this article. The record of the conviction shall be
8 conclusive evidence thereof. The board may order the certificate or permit suspended or revoked,
9 or may decline to issue a certificate or permit, when the time for appeal has elapsed, or the
10 judgment of conviction has been affirmed on appeal or when an order granting probation is made,
11 suspending the imposition of sentence, irrespective of a subsequent order under the provisions of
12 Section 1203.4 of the Penal Code allowing such person to withdraw his plea of guilty and to enter
13 a plea of not guilty, or setting aside the verdict of guilty or dismissing the accusation, information
14 or indictment."

15 8. Section 5110 states, in pertinent part:

16 "(a) After notice and an opportunity for a hearing, the board may deny an application to
17 take the licensing examination, deny admission to current and future licensing examinations, void
18 examination grades, and deny an application for a license or registration to any individual who
19 has committed any of the following acts:

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21 "(4) Any act that if committed by an applicant for licensure would be grounds for denial
22 of a license or registration under Section 480 or if committed by a licensee or a registrant would
23 be grounds for discipline under Section 5100. . . ."

24 REGULATORY PROVISION

25 9. California Code of Regulations, title 16, section 99 states, in pertinent part:

26 "For the purposes of denial, suspension, or revocation of a certificate or permit pursuant to
27 Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act
28 shall be considered to be substantially related to the qualifications, functions or duties of a

1 certified public accountant or public accountant if to a substantial degree it evidences present or
2 potential unfitness of a certified public accountant or public accountant to perform the functions
3 authorized by his or her certificate or permit in a manner consistent with the public health, safety,
4 or welfare. . . .”

5 10. California Code of Regulations, title 16, section 99.1 states:

6 When considering the denial of a certificate or permit under Section 480 of the Business
7 and Professions Code, the suspension or revocation of a certificate or permit or restoration of a
8 revoked certificate under Section 11522 of the Government Code, the board, in evaluating the
9 rehabilitation of the applicant and his present eligibility for a certificate or permit, will consider
10 the following criteria:

11 (1) Nature and severity of the act(s) or offense(s).

12 (2) Criminal record and evidence of any act(s) committed subsequent to the act(s) or
13 offense(s) under consideration which also could be considered as grounds for denial, suspension
14 or revocation.

15 (3) The time that has elapsed since commission of the act(s) or offense(s) referred to in
16 subdivision (1) or (2).

17 (4) The extent to which the applicant or licensee has complied with any terms of parole,
18 probation, restitution, or any other sanctions lawfully imposed against the applicant or licensee.

19 (5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the
20 Penal Code.

21 (6) Evidence, if any, of rehabilitation submitted by the applicant or licensee.

22 **FIRST CAUSE FOR DENIAL OF APPLICATION**

23 **(Conviction of Substantially Related Crime)**

24 11. Respondent's application is subject to denial under sections 480 subdivision (a)(1),
25 and 5110, subdivision (a)(4), in conjunction with California Code of Regulations, title 16,
26 sections 99 and 99.1, that on or about November 20, 1997, Respondent was convicted of a crime
27 substantially related to the qualifications, functions, and duties of a certified public accountant, as
28 follows:

1 a. On or about November 20, 1997, after pleading guilty, Respondent was convicted of
2 one felony count of violating Title 21, United States Code section 952(a) [importation of heroin
3 into the United States] in the criminal proceeding entitled *United States of America v. Charles*
4 *Oscar de Simoni* (S.D. Fl., 1997, No. 97CR00652-001). The Court sentenced Respondent to 87
5 months in prison, and placed him on four (4) years probation.

6 b. The circumstances underlying the conviction are that on or about August 8, 1997,
7 Respondent arrived at Miami International Airport via an international flight from Caracas,
8 Venezuela, and was found by customs officials to have five (5) pounds of heroin secreted inside
9 ten (10) jackets.

10 **SECOND CAUSE FOR DENIAL OF APPLICATION**

11 **(Dishonesty, Fraud or Deceit)**

12 12. Respondent's application is subject to denial under sections 480, subdivision (a)(2),
13 and 5110, subdivision (a)(4), in that on or about August 8, 1997, Respondent committed an act
14 involving dishonesty, fraud or deceit with the intent to substantially benefit himself or others
15 when he attempted to smuggle five (5) pounds of heroin into the United States. Complainant
16 refers to and by this reference incorporates the allegations set forth above in paragraph 11,
17 subparagraphs a and b, inclusive, as though set forth fully.

18 **THIRD CAUSE FOR DENIAL OF APPLICATION**

19 **(Unprofessional Conduct - Conduct Warranting Denial of Licensure)**

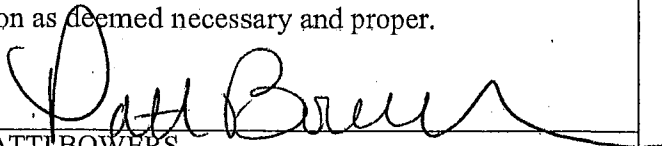
20 13. Respondent's application is subject to denial under sections 480, subdivision (a)(3),
21 and 5110, subdivision (a)(4), in conjunction with sections 490 and 5100, subdivision (a), in that
22 Respondent committed an act if done by a CBA licentiate would be grounds of suspension or
23 revocation of licensure. Complainant refers to and by this reference incorporates the allegations
24 set forth above in paragraphs 11 and 12, inclusive, as though set forth fully.

25 **PRAYER**

26 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
27 and that following the hearing, the California Board of Accountancy issue a decision:
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- 1 1. Denying Charles Oscar De Simoni's Certified Public Accountant License
2 Application; and
3 2. Taking such other and further action as deemed necessary and proper.

4 DATED: October 20, 2011


PATTI BOWERS
Executive Officer
California Board of Accountancy
Department of Consumer Affairs
State of California
Complainant

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